

PDC Interpretation

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SEE ALSO: [RCW 42.17.130](#);
[RCW 42.17.128](#);
[RCW 42.17.190](#);
[WAC 390-05-271](#);
[WAC 390-05-273](#);
[WAC 390-20-052](#);
[WAC 390-20-054](#); and,
[WAC 390-20-120](#)

Determining When an Entity is the Functional Equivalent of a Public Agency under [RCW 42.17](#) --- [*Telford v. Thurston County Board of Commissioners*](#)

Intent

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter [42.17 RCW](#), including certain campaign and lobbying restrictions for public agencies. This interpretation is intended to provide guidance by informing the public, public agencies and public officials of the analysis in a Washington State Court of Appeals decision, [Telford v. Thurston County Board of Commissioners, 95 Wn.App. 149, 974 P.2d 886 \(1999\)](#). The Commission is using that analysis in determining whether an entity is the functional equivalent of a public agency for the purposes of [RCW 42.17](#).

Background

Telford v. Thurston County Board of Commissioners

In 1999, the Court of Appeals issued the [Telford](#) decision concerning whether two associations of counties and county officials were the functional equivalent of public agencies for the purpose of [RCW 42.17](#) and were therefore prevented from using public funds in political campaigns. The Court of Appeals decided that a four-part balancing test applies in determining whether an entity is the functional equivalent of a “public agency” for the purpose of [RCW 42.17](#).

The Court described this functional equivalent analysis is conducted on a case-by-case basis. The Court also described that each criterion need not be satisfied; instead, the factors are to be balanced.

Statutes, Rules and Other Commission Guidance

[RCW 42.17.130](#) provides in part that facilities of a public office or agency may not be used to assist campaigns or elections, with three exceptions.¹ [RCW 42.17.020](#) defines “agency” and “public office.” [RCW 42.17.128](#) restricts the use of public funds for political campaigns. [RCW 42.17.190](#) provides in part that elective and appointed officials and their employees, and employees of public offices or agencies, may not use or authorize the use of any of the facilities of a public office or agency in any effort to support or oppose an initiative to the legislature. [RCW 42.17.190](#) provides other lobbying restrictions on legislative activities of state agencies, other units of government, elective officials and public employees.

The Commission has adopted rules with respect to [RCW 42.17.130](#) at [WAC 390-05-271](#) (general applications of [RCW 42.17.130](#)) and [WAC 390-05-273](#) (definition of normal and regular conduct).² The Commission has adopted rules regarding [RCW 42.17.190](#) at [WAC 390-20-052](#) (application of [RCW 42.17.190](#) – reports of agency lobbying), [WAC 390-20-054](#) (agency lobbying – reporting of lobbying by independent contractors), and [WAC 390-20-120](#) (forms for reporting of legislative activities by public agencies).³

Interpretation

In light of the [Telford](#) decision, the Commission describes that it will use the [Telford](#) four-part balancing test if there is a question as to whether an entity is a public agency for the purposes of [RCW 42.17](#), including [RCW 42.17.130](#) and [RCW 42.17.190](#). This test will be used on a case-by-case basis. The factors will be balanced; not all four factors need be satisfied in order to conclude an entity is a public agency. Those factors are:

- (1) whether the entity performs a governmental function,
- (2) the level of government funding,
- (3) the extent of government involvement or regulation, and

¹ [RCW 42.17.130](#) does not apply to persons who are state officers or state employees because they are subject to similar restrictions in the State Ethics Laws in [RCW 42.52.180](#). See [RCW 42.17.131](#).

² The Commission has provided further guidance on public agency activities under [RCW 42.17](#) in [PDC Interpretation 10-01](#) (*Public Service Announcements By State-Elected Officials and Municipal Officers*), [PDC Interpretation 04-02](#) (*Guidelines for Local Government Agencies in Election Campaigns*) and [PDC Interpretation 01-03](#) (*Guidelines for School Districts in Election Campaigns*). Commission rules and interpretive statements are available on the Commission’s website at www.pdc.wa.gov. Information on Commission cases enforcing [RCW 42.17](#), including [RCW 42.17.128](#), [RCW 42.17.130](#) and [RCW 42.17.190](#), is also available on the Commission’s website, on the Enforcement and Compliance page’s link to the [Compliance Tracking System](#).

³ Also see the [Public Agency Lobbying Instructions](#) manual and other materials available on the Commission’s website.

(4) whether the entity was created by government.

To provide further guidance, the Commission notes that in [Telford](#), the Court looked at several facts concerning the two associations (entities) that were the parties in that case. Those facts included the associations' history and organic documents, sources of revenue and funding systems, purposes, membership, services and activities, the degree to which they were controlled by public officials, whether they participated in public retirement systems or other government systems, and the reporting and auditing of their financial affairs including whether the associations were audited by the state.

The Commission describes that while the list of facts examined in [Telford](#) was not exhaustive, facts such as those will be relevant in its review of whether an agency is the functional equivalent of a public agency. The Commission also describes there may be other relevant facts to consider in a particular situation, given the case-by-case nature of the [Telford](#) analysis.